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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

21 Cr. 458 (CM)

5 FILIPPO BERNARDINI,

6
7 Defendant.

8 Conference

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9
10 New York, N.Y.
February 1, 2022
11 2:00 p.m.

12 Before:

13 HON. COLLEEN MCMAHON,

14 Chief Judge

15 APPEARANCES

16 DAMIAN WILLIAMS

17 United States Attorney for the
Southern District of New York

18 BY: DANIEL G. NESSIM

Assistant United States Attorney

19 DAVID E. PATTON

20 Federal Defenders of New York, Inc.
Attorneys for Defendant

21 BY: HANNAH McCREA

JENNIFER L. BROWN

22 Assistant Federal Defenders

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(Case called)

MR. NESSIM: Good afternoon, your Honor.

Daniel Nessim for the government.

THE COURT: Good afternoon.

MS. MCCREA: Good afternoon, your Honor.

Hannah McCrea with Federal Defenders on behalf of
Mr. Bernardini.

THE COURT: Hello, Ms. McCrea. Have a seat.

Mr. Nessim, I won't pretend that I haven't read
something about this case in the newspaper, but why don't you
tell me a little bit about it.

MR. NESSIM: Yes, your Honor.

For at least five years the defendant engineered a
scheme to impersonate real people involved in the publishing
industry. He did this by creating more than a 150 lookalike
domains and then registering individual email accounts that
impersonated those real people. He used those accounts to
fraudulently obtain prepublication manuscripts of forthcoming
books, book notes and other written material related to
forthcoming books.

And over the course of this scheme, he impersonated
hundreds of people and successfully obtained hundreds of
manuscripts and attempted to obtain a similar number of
manuscripts that he was unsuccessful in ultimately obtaining.

THE COURT: What exactly did he do? I mean, I know

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1 what people do when they get pirate copies of movies. They
2 make more pirate copies of movies and they make them available
3 on the internet. What did he do with these manuscripts that he
4 obtained?

5 MR. NESSIM: At this point, we're not aware of any
6 remarketing or sale of the stolen manuscripts. We're still
7 investigating a number of things in this case. We've seized a
8 number of devices from the defendant incident to his arrest
9 which we're attempting to search.

10 THE COURT: Okay. He wanted to read books before they
11 were published. All right. Interesting, very interesting.

12 So what's the status of the discovery?

13 MR. NESSIM: The government's made two discovery
14 productions. The first on January 20th, the second on January
15 25th, that included subpoena returns, search warrant returns,
16 search warrant affidavits and warrants and other items. We
17 anticipate one more discovery production for additional Rule 16
18 items in our possession. We expect that production to be made
19 within the next two weeks.

20 Once that production is made, our current Rule 16
21 obligations we believe will be complete, although we do
22 anticipate rolling productions for devices we do not yet have
23 assess to and subpoena returns and potentially Mutual Legal
24 Assistance Treaty requests, which we do not yet have in our
25 possession.

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1 THE COURT: So let's talk about devices. You have or
2 within two weeks will turn over the contents of some devices?

3 MR. NESSIM: We seized a Kindle, a laptop, an I-pad
4 and a cellular phone from the defendant when he was arrested.
5 We've only accessed the Kindle at this time, so we'll produce
6 the image of that device. The others we are attempting to
7 access. We don't have an anticipated timeline on when or
8 whether we'll be able to access those.

9 THE COURT: Okay. But the contents of the Kindle have
10 been made available?

11 MR. NESSIM: Not yet. That's in the next production.

12 THE COURT: In the next production. Okay. And then
13 you're trying to get stuff with an MLAT?

14 MR. NESSIM: Yes, your Honor.

15 THE COURT: What?

16 MR. NESSIM: The equivalent of what would be subpoena
17 return of the United States from the U.K. where Mr. Bernardini
18 resided before his arrest. That's the primary Rule 16 material
19 we expect to get from an MLAT.

20 THE COURT: Thank you. Okay. And I know you can't
21 really estimate what the timetable is on that. Fine.

22 Anything else from the government?

23 MR. NESSIM: No, your Honor. Just that from talking
24 to defense counsel, I understand they would like 60 days for a
25 conference.

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1 THE COURT: Well, let's talk to Ms. McCrea. Hello.
2 How are you, Ms. McCrea.

3 MS. MCCREA: Hello. How are you, your Honor?

4 THE COURT: I'm fine. What's up?

5 MS. MCCREA: Your Honor, that's generally all correct.
6 We did receive two productions. I would just note they're
7 both, particularly the second one, quite voluminous. We are
8 still working our way through that. As the government
9 represented, I understand there's more coming.

10 So in light of the fact that we're still relatively
11 early in obtaining and reviewing discovery, we would ask to put
12 this over for 60 days.

13 THE COURT: Okay. Well, I don't have any problem with
14 that. Mr. O'Neil would like to know why you handed up an
15 updated financial affidavit. I don't know anything about
16 Mr. Bernardini, but I hadn't expected to see Federal Defenders
17 here today, so.

18 MS. MCCREA: I understand. Your Honor,
19 Mr. Bernardini's financial status changed slightly since we
20 were at the presentment, and I know we have an ongoing
21 obligation to update the Court regarding his financial
22 circumstances.

23 I can just speak briefly to the two main substantive
24 changes. At the time Mr. Bernardini was presented, we had been
25 informed he had been suspended from his job. That is still the

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1 case, however, we were informed after the presentment that he
2 is least for the moment going to continue to receive his pay
3 while they conduct their own investigation.

4 It's unclear how long that will take. How much longer
5 he will be receiving his pay, but I wanted to represent that
6 faithfully to the Court since we previously understood him to
7 be unemployed.

8 And similarly as I believe the Court is aware, he is
9 on bail under pretty strict conditions here in New York City.
10 He's been obligated to obtain an apartment, so there's now been
11 a substantial increase in his expenses. I believe pretrial and
12 the government are pretty well-aware that he obtained an
13 apartment in the city in order to remain in New York for this
14 case. It's a temporary apartment.

15 THE COURT: Okay. All right. Fine. Sixty days is
16 fine with me.

17 Mr. O'Neil, that would be April.

18 DEPUTY CLERK: First week of April, April the 5th at
19 two o'clock. April 5th or 6th, whichever is better.

20 THE COURT: The 5th is fine. Time is excluded in the
21 interest of justice. The defendant's interest in a speedy
22 trial being outweighed by the request of his counsel to have
23 additional time to review government's discovery, which is
24 apparently voluminous and has not all been provided yet, and
25 that will quite suffice.

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1 So, April 5th at two o'clock.

2 Thank you, everyone. See you then.

3 (Adjourned)

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